

SECTION 00500

FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2011 by and between the Board of Public Works and Safety, West Lafayette, Indiana (hereinafter called OWNER) and Reynolds Inliner, LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish all labor, materials, equipment, supplies and services for the construction of the North River Road Interceptor Sewer Rehabilitation including approximately 3,000 feet of 24-inch sanitary sewer, seventeen (17) sewer manholes, 55 feet of dig and replace sewer repair and other appurtenant Work as shown or specified.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**West Lafayette, Indiana
North River Road Interceptor Sewer Rehabilitation**

Article 2. ENGINEER

The Project has been designed by Greeley and Hansen who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

3.1 Substantial Completion

All Work shall be substantially completed within 120 calendar days of the Notice-to-Proceed.

3.2 Final Completion and Readiness for Final Payment

All Work shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 150 calendar days of the Notice-to-Proceed.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraphs 3.1 and 3.2 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER One Thousand dollars (\$1,000) for each calendar day that expires after the time specified for Substantial Completion. CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Final Completion and Readiness for Final Payment.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the total sum of the amounts for all Contract Items. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

BID

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
1	Lump Sum	Mobilization and Demobilization for the lump sum price of <u>Sixteen Thousand Nine Hundred Fifty</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>16,950.00</u>
2	Lump Sum	Maintenance of Traffic for the lump sum price of <u>Seven Thousand Two Hundred</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>7,200.00</u>
3	2,980 Lineal Feet	24" Cured-in-Place Pipe complete in place as shown and specified for the unit price of <u>Eighty-Four</u> dollars and <u>Fifty</u> cents per lineal foot.	\$ <u>84.50</u>	\$ <u>251,810.00</u>
4	2 Each	Lateral Reinstatements complete in place as shown and specified for the unit price of <u>Two Hundred Fifty</u> dollars and <u>Zero</u> cents each.	\$ <u>250.00</u>	\$ <u>500.00</u>
5	55 Lineal Feet	Dig and Replace Sewer Repair complete in place as shown and specified for the unit price of <u>Five Hundred Ninety</u> dollars and <u>Zero</u> cents per lineal foot.	\$ <u>590.00</u>	\$ <u>32,450.00</u>
6	10 Vertical Feet	Manhole Chimney/Riser Reconstruction complete in place as shown and specified for the unit price of <u>Two Hundred Seventy-Five</u> dollars and <u>Zero</u> cents per vertical foot.	\$ <u>275.00</u>	\$ <u>2,750.00</u>

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
7	31 Each	Manhole Frame and Cover complete in place as shown and specified for the unit price of <u>Eleven Hundred</u> dollars and <u>Zero</u> cents each.	\$ <u>1,100.00</u>	\$ <u>34,100.00</u>
8	14 Each	Exterior Chimney Seal complete in place as shown and specified for the unit price of <u>Three Hundred Ninety</u> dollars and <u>Zero</u> cents each.	\$ <u>390.00</u>	\$ <u>5,460.00</u>
9	140 Vertical Feet	Sewer Manhole Lining complete in place as shown and specified for the unit price of <u>Two Hundred Ninety</u> dollars and <u>Zero</u> cents per vertical foot.	\$ <u>290.00</u>	\$ <u>40,600.00</u>
10	Lump Sum	Work Allowance for the lump sum price of <u>One Hundred Thousand</u> dollars and <u>Zero</u> cents.	Lump Sum	\$ <u>100,000.00</u>

TOTAL BID PRICE (Total of All Contract Item Prices)

<u>Four Hundred Ninety-One Thousand Eight Hundred Twenty Dollars</u> (Amount in Words)	<u>(\$ 491,820.00)</u> (Amount in Figures)
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Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage

OWNER shall request the financing agency, Indiana Finance Authority, to make progress payments on the basis of CONTRACTOR's Applications for Payment, on or about the thirtieth day of each month during performance of the Work as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

- 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

Progress payments shall not exceed an amount equal to 90 percent of Work completed and of the cost of materials not incorporated in the Work but delivered and suitably stored (with the balance being retainage). If the Work is 50 percent complete as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made; and

- 5.1.2 Upon Substantial Completion, OWNER may pay an amount sufficient to increase total payments to CONTRACTOR to 100 percent of the Work completed, less 200 percent of ENGINEER's estimate of the value of Work to be completed or corrected attached to the certificate of Substantial Completion.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data".
- 6.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 6.4 CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions as to the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02B of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- 6.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- 6.6 CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.7 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.8 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.9 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement, identified as Section 00500
- 7.2 Performance and Payment Bonds, identified as Sections 00610 and 00620
- 7.3 Notice to Proceed, identified as Section 00680
- 7.4 CONTRACTOR'S BID, identified as Section 00300
- 7.5 Standard General Conditions, identified as Section 00700
- 7.6 Supplementary Conditions, identified as Section 00800
- 7.7 Specifications bearing the title City of West Lafayette, Indiana North River Road Interceptor Sewer Rehabilitation
- 7.8 Drawings bearing the title City of West Lafayette, Indiana North River Road Interceptor Sewer Rehabilitation
- 7.9 Addenda (numbers 1 to 2, inclusive)
- 7.10 Exhibits A, B and C

The documents listed in the paragraphs above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.05 of the General Conditions.

Article. 8 MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.5 This Contract is to be governed by the law of the State of Indiana. Venue for all disputes arising under this Contract shall be Tippecanoe County, Indiana.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER, and CONTRACTOR. All portions of the Contract Documents have been signed, or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 2011 (which is the Effective Date of the Agreement).

OWNER: Board of Public Works and Safety CONTRACTOR: REYNOLDS INLINER, LLC
City of West Lafayette _____

By: _____
Title: Mayor
[CORPORATE SEAL]

By: *Denise McClanahan*
Title: DENISE MCCLANAHAN
VICE-PRESIDENT
[CORPORATE SEAL]

Attest: _____
Clerk-Treasurer
Address for giving notices:
609 West Navajo Street
West Lafayette, IN 47906

Attest: *Linda C. Andry*
Title: LINDA C. ANDRY
ADMINISTRATIVE
ASSISTANT
Address for giving notices:
4520 N. STATE ROAD 37
ORLEANS, IN 47452-0186
License No. _____
Agent for service of process: _____

(If CONTRACTOR is a corporation or partnership, attach evidence of authority to sign.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: 812.865.3232

Fax: 812.865.3075

END OF SECTION